

# Re Churston Covenant

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## ADVICE

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### **1 INTRODUCTION AND SUMMARY**

1.1 I am instructed to advise as to various questions that have arisen in relation to the decision to impose the Churston Covenant which effectively provides that there shall not be any development of the land without the approval in a referendum of the majority of residents. The questions are:

- i) Whether the covenant is likely to prejudice the delivery of the Local Plan.
- ii) Whether it would delay the emerging local plan.

1.2 In summary there is a considerable risk that if the Churston Covenant is imposed that landowners at the forthcoming examination will persuade the Inspector that all the Council owned sites are not developable and that the plan will need to find other sites in order to be sound. This is likely to delay the Local Plan and mean that it will not select the sites that it currently judges to be the best to come forward but will have to promote less good sites in planning terms.

1.3 The Churston Covenant and its precedent effect makes it harder to defend the Council's five year housing supply position which could have a very damaging consequence on its ability to control housing developments and defend planning decisions on supply of housing policies.

- 1.4 I have not advised as to the financial ramifications of this Covenant on the Council as landowner because I am advising the Council as planning authority. The Council will clearly need to consider the financial effect of this covenant to them as landowner.

## **2 ANALYSIS ON EFFECT ON LOCAL PLAN**

- 2.1 The covenant directly affects 132 units at the Churston golf club site. However the report to Council and the Mayor of 25 September 2014 suggests that such a covenant would create a risk of precedent. There are approximately 1000 dwellings proposed on Council owned sites in the emerging Local plan which is 12% of the lower target.
- 2.2 The examination hearings of the Local Plan are due to commence on 18 November 2014. The Inspector will have to conclude on whether the plan is sound. The NPPF provides<sup>1</sup> that to be sound the Plan needs to be Positively prepared which involves meeting objectively assessed requirements where it is reasonable to do so and consistent with achieving sustainable development. It also needs to be Effective which means being deliverable.
- 2.3 There is a substantial risk that the Inspector at the examination will form the view that if there is a risk to all or many of the dwellings on Council land that he will take the view that the plan is not sound. This will delay the plan while this is being considered and may well result in the need to allocate sites which are environmentally more damaging.
- 2.4 Quite clearly if there are doubts about the deliverability of sites within the 5 year supply as a result of the Churston Covenant this will not

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<sup>1</sup> Paragraph 182

assist the Council in maintaining a 5 year supply either now or under the emerging local plan.

- 2.5 The evidence submitted to the Inquiry by the Council at Churston is to the effect that there is a five year supply. However the developers have now sought to challenge this even on the Council's assumptions<sup>2</sup> as to requirements based on the effect of the Churston Covenant. It may well be that if all the assumptions made by the Council are correct that it would be possible to show that there is a five year supply and that this evidence is in error. However the Council should not be complacent and the existence of the Churston Covenant and its precedent effect is clearly making it harder to defend the Council's 5 year supply position. This could have very serious effects on the Council's ability to control other housing sites in the countryside and defending other planning decisions with refusals on supply of housing policies.

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<sup>2</sup> See Mr Tant's latest supplementary at U3.22ff